



January 18, 2008

HOUSE BILL No. 1026

DIGEST OF HB 1026 (Updated January 16, 2008 5:07 pm - DI 69)

Citations Affected: IC 23-14; IC 30-2; IC 30-4; noncode.

Synopsis: Funerals and cemeteries. Requires the owner of a cemetery to pay to a perpetual care fund or an endowment care fund any amount necessary to maintain the principal in the fund. Provides that a person who: (1) sells or otherwise furnishes a container that will be used to encase the remains of a deceased individual and that is not airtight and watertight to another person; and (2) does not inform the other person in writing that the container is not airtight and watertight before the person sells or otherwise furnishes the container to the other person; commits a Class B infraction. Provides that a person who knowingly or intentionally disburses funds in a funeral trust for purposes other than the intended purposes of the trust commits a Class C felony. Provides that a trustee that disburses funds in a funeral trust without verifying the death of the person for whose funeral or burial the funds were paid commits a Class A infraction. Requires the state board of funeral and cemetery service to adopt rules specifying the types of documentation that may be used to verify certain events have occurred before funds may be disbursed from certain funeral trusts and escrow accounts. Requires the seller of a prepaid funeral service trust to pay an amount necessary to restore the trust to the original contract value of all the services or merchandise under the contracts, or parts of the contracts, that remain undelivered. Provides that the seller of a funeral trust established after June 30, 2008, may not be an affiliate, a parent, or a subsidiary organization of the trustee of the funeral trust. Specifies that a trust for a benevolent public purpose includes a perpetual care fund or endowment care fund established, a prepaid funeral plan or funeral

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Effective: Upon passage; July 1, 2008; January 1, 2009.

Cheatham, Koch, Hoy

January 8, 2008, read first time and referred to Committee on Courts and Criminal Code.
January 17, 2008, amended, reported — Do Pass.

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trust, and a trust or an escrow account created from payments of funeral, burial services, or merchandise in advance of need. Specifies the actions the attorney general may take against a trustee of a benevolent trust, a prepaid funeral trust or escrow account, a cemetery owner, a funeral home, and certain other persons for committing a breach of trust, violating the mandate of a charitable trust, or failing to comply with a requirement or prohibition set forth in certain laws concerning cemeteries and trusts. Requires the probate code study commission to study and make findings and recommendations concerning certain issues related to cemetery perpetual care trusts and preneed funeral trusts.

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January 18, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1026

A BILL FOR AN ACT to amend the Indiana Code concerning funerals and cemeteries and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 23-14-48-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) The owner of
3 each cemetery shall provide for the creation and establishment of an
4 irrevocable perpetual care fund.
5 (b) The principal of a perpetual care fund established under this
6 section shall permanently remain intact, except as provided in this
7 chapter. The principal shall be known as the "perpetual care fund" or
8 "endowment care fund" of the cemetery. **The owner of a cemetery**
9 **shall pay to the perpetual care fund or endowment care fund any**
10 **amount necessary to maintain the principal in the fund.**
11 (c) Fifty percent (50%) of any appreciation of the principal of the
12 fund may be withdrawn annually not more than forty-five (45) days
13 after the end of the fund's fiscal year.
14 (d) Any income earned by the fund during the fiscal year may be
15 withdrawn quarterly during the fund's fiscal year.
16 (e) The income from a fund established under this section and any
17 withdrawal of the appreciation of the principal under subsection (c)

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shall be devoted to the perpetual care of the cemetery.

(f) The fund established by this chapter is not subject to attachment by a creditor unless the underlying debt was incurred for the perpetual care or endowment care (as defined in IC 23-14-33-30) of the cemetery for which the fund was established.

SECTION 2. IC 23-14-48-3, AS AMENDED BY P.L.65-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) A perpetual care fund shall be established under this chapter as follows:

(1) In the case of a cemetery for earth burials, by the application and payment to the perpetual care fund of an amount at least equal to:

(A) fifteen percent (15%) of the sale price; or

(B) eighty cents (\$0.80) per square foot of area; of each burial plot sold or transferred, whichever is greater.

(2) In the case of a community or public mausoleum, or community or public garden crypt, by the application and payment to the perpetual care fund of an amount at least equal to:

(A) eight percent (8%) of the sale price; or

(B) one hundred dollars (\$100) per crypt sold or transferred; whichever is greater.

(3) In the case of a community columbarium, by the application and payment to the perpetual care fund of an amount at least equal to twenty dollars (\$20) per niche sold or transferred.

(b) From the sale price, any payment on the sale price, or in a nonmonetary transfer, the owner shall pay an amount in proportion to the requirements of subsection (a)(1) through (a)(3) to the care fund. The payment must be in cash and shall be deposited with the ~~custodian~~ or trustee of the fund:

(1) not more than thirty (30) days after the end of the month in which payments on the sale are received; or

(2) not more than thirty (30) days after the end of the month in which there was a transfer which did not involve a sale.

(c) The payments required by this section are required to be paid only on the original sale or transfer and not again for any subsequent resale or transfer of the same ground interment rights, crypt, or niche.

(d) The ~~custodian~~ or trustee of a fund established under this chapter must keep the fund segregated from any other fund or account belonging to the owner of the cemetery.

SECTION 3. IC 23-14-48-7, AS AMENDED BY P.L.65-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) Not more than ninety (90) days after the end

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of the fiscal year of a cemetery to which this chapter applies, the custodian or trustee of the perpetual care fund of the cemetery shall prepare and file with the owner of the cemetery a detailed accounting and report of the perpetual care fund for the preceding fiscal year. The report:

(1) must include, among other things, a properly itemized listing of the securities in which the funds are invested; and

(2) shall be available for inspection and copying at all times by any owner of or holder of a burial right in the cemetery at the usual place at which the regular business of the cemetery is transacted.

(b) Not more than one hundred five (105) days after the end of the fiscal year of a cemetery to which this chapter applies, the ~~custodian or~~ trustee of the perpetual care fund of the cemetery shall file the report required under subsection (a) with the state board of funeral and cemetery service.

(c) The state board of funeral and cemetery service may audit or order an audit of the perpetual care fund of a cemetery if the state board of funeral and cemetery service determines that the ~~custodian or~~ trustee of the perpetual care fund is not complying with the requirements set forth in subsections (a) and (b). The cemetery that is the subject of the audit shall pay all costs associated with the audit.

(d) The owner of a cemetery shall maintain a report required by this section for the longer of:

(1) ten (10) years; or

(2) three (3) years after the date the owner sells or otherwise transfers the cemetery.

SECTION 4. IC 23-14-77 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 77. Containers Used to Encase Human Remains

Sec. 1. A person who sells or otherwise furnishes to another person a container that:

(1) will be used to encase the remains of a deceased individual; and

(2) is not airtight and watertight;

shall inform the other person in writing that the container is not airtight and watertight before the person sells or otherwise furnishes the container to the other person.

Sec. 2. A person who violates this chapter commits a Class B infraction.

SECTION 5. IC 30-2-9-7, AS AMENDED BY P.L.113-2007,



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SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 7. (a) Except as provided in subsection (b) **or (c)**, a person who violates this chapter or makes any false and fraudulent report required under this chapter commits a Class B misdemeanor.

(b) A person who knowingly or intentionally uses **or disburses** funds in a funeral trust established under this chapter for purposes other than the purposes required under this chapter commits a Class C felony.

(c) **Except as authorized in an agreement described in section 4 of this chapter permitting the early withdrawal of funds, a trustee that disburses funds in a funeral trust established under this chapter without verifying:**

(1) the death of the settler of the contract; and

(2) that the beneficiary fully performed all funeral and burial services provided for in the contract;

through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by IC 25-15-9-1 commits a Class A infraction.

SECTION 6. IC 30-2-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. The contract under which funds are accepted under this chapter must be in writing and contain, as a minimum, the following provisions:

(1) Details of the professional services, facilities, equipment, and a description of merchandise to be provided by the beneficiary. **If the merchandise includes a container that:**

(A) will be used to encase the remains of a deceased individual; and

(B) is not airtight and watertight;

the details must include a written statement indicating that the container is not airtight and watertight.

(2) A provision that the beneficiary may provide merchandise of equal or better quality if the merchandise contracted for is no longer available at the time the merchandise is to be provided.

(3) The place of the funeral and the place of the burial or other final disposition to be made of the decedent.

(4) An acknowledgment by the settlor that ~~he~~ **the settlor** understands the irrevocable nature of the trust.

(5) A provision for reasonable adjustment of the services, or cost of services, if the body is transported a distance greater than twenty-five (25) miles to the place of funeral or the place of burial or final disposition and transportation of a distance in excess of

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twenty-five (25) miles was not contemplated at the time of the execution of the contract.

(6) A provision for full payment of the contract amount by the settlor, a description of the manner in which the funds are to be deposited, and a statement that the interest will accrue to the trust account and a further statement that the principal and interest earned shall inure to the beneficiary to cover all the costs incident to the beneficiary's performance of the contract, any excess to be refunded to the estate of the settlor or to the heirs at law.

(7) The settlor's name, address, and social security number.

(8) The date that the funeral trust is executed by the settlor.

(9) The trustee's name and address.

(10) The beneficiary's license number issued by the state board of funeral service.

(11) A provision that except under the circumstances described in subsection (12), only the settlor may change the beneficiary, that ~~he~~ **the settlor** may make the change at any time, and that the change is not effective until written notification is given to the original beneficiary.

(12) A provision that allows the state board of funeral service to change the beneficiary by naming a funeral home as new beneficiary if the original beneficiary becomes deceased, dissolved, terminated, or otherwise loses beneficiary status as a licensee of the state board, and the settlor or ~~his~~ **the settlor's** guardian or personal representative fails to select a qualified beneficiary.

SECTION 7. IC 30-2-10-9, AS AMENDED BY P.L.113-2007, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 9. (a) Except as provided in subsection (b), a person who knowingly violates this chapter commits a Class A misdemeanor.

(b) A person who knowingly or intentionally uses **or disburses** funds in a funeral trust established under this chapter for purposes other than the purposes required under this chapter commits a Class C felony.

(c) A trustee that disburses funds in a funeral trust established under this chapter without verifying:

(1) the death of the settlor of the contract; and

(2) that the beneficiary fully performed all funeral and burial services provided for in the contract;

through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by

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IC 25-15-9-1 commits a Class A infraction.

SECTION 8. IC 30-2-13-12.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12.5. (a) This section applies to the following contracts entered into or established under this chapter after June 30, 1999:

- (1) Contracts for prepaid services.
- (2) Contracts for prepaid merchandise.
- (3) Trusts or escrows established to hold consideration paid for services or merchandise subject to a contract entered into under this chapter.

(b) A contract between a purchaser and a seller must:

- (1) specify that the consideration for the contract is:
 - (A) cash, payable either in a lump sum or in installments; or
 - (B) an insurance policy that is:
 - (i) newly issued in conjunction with and integral to the contract;
 - (ii) issued previously in a transaction separate and distinct from the contract; or
 - (iii) both.

If a contract is funded with an insurance policy, the ownership of the policy must be irrevocably assigned to a trustee, and the seller may not borrow against, pledge, withdraw, or impair the cash value of the policy;

- (2) specify that only the purchaser, acting by written notice to the seller, may revoke the contract within thirty (30) days after the date the contract is signed by the purchaser and the seller and that the contract becomes irrevocable upon the expiration of the thirty (30) day period;

- (3) specify that, if the contract is revoked, the seller shall refund and return to the purchaser, without interest, the cash or insurance policy used to fund the contract;

- (4) specify that not more than thirty (30) days after the contract is signed by the purchaser and the seller, the whole of the cash or insurance policy serving as consideration for the contract must be deposited into a trust or escrow authorized by subsection (c) or (d). However, a seller may elect to serve as trustee of a previously existing life insurance contract;

- (5) except as provided in subsection (f), unconditionally require that the seller shall deliver all services or merchandise, or both, specified in the contract and receive as consideration for the delivery of services or merchandise, or both, only the cash or insurance policy held in trust or escrow without regard to the

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1 solvency of the insurer or the adequacy or loss in value of any
2 cash deposit or insurance policy used to fund a contract;

3 (6) except as provided in subsection (f), prohibit a seller from
4 imposing additional charges to recover any shortage or difference
5 between the retail prices for services or merchandise, or both, in
6 effect on the date of delivery of the services or merchandise, or
7 both, and the value of the trust or escrow applicable to the
8 contract on the date of delivery;

9 (7) require that a seller accepting the transfer of a contract
10 permitted under section 13 of this chapter shall honor the
11 requirements and obligations of the contract;

12 (8) permit the seller to assess a finance charge on a contract sold
13 on an installment basis and require that the seller disclose to the
14 purchaser the applicable requirements of federal and Indiana law;

15 (9) provide that the contract must comply with the following
16 requirements:

17 (A) The contract must be made in a form that is:

- 18 (i) written in clear and understandable language; and
- 19 (ii) printed in a size and style of type that is easy to read.

20 (B) The contract must describe the services, merchandise, or
21 cash advance items being purchased. **If the merchandise**
22 **includes a container that:**

- 23 (i) **will be used to encase the remains of a deceased**
24 **individual; and**
- 25 (ii) **is not airtight and watertight;**

26 **the contract must include a written statement indicating**
27 **that the container is not airtight and watertight.**

28 (C) The contract must identify the following by name, address,
29 and telephone number:

- 30 (i) The seller.
- 31 (ii) The purchaser.
- 32 (iii) The contract beneficiary if the beneficiary is an
33 individual other than the purchaser.

34 (D) The contract must contain the seller's certificate of
35 authority number and the date of the contract.

36 (E) The contract must provide that if an item of the particular
37 services or merchandise specified in the contract is
38 unavailable at the time of delivery, the seller shall deliver
39 services or merchandise similar in style, quality, and of equal
40 value to the unavailable item in the place of the item.

41 (F) The contract must disclose the precise manner in which the
42 contract is to be funded by:

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- (i) identifying the consideration for the contract;
- (ii) identifying the name, number, if known, and issuer of any insurance policy used to fund the contract; and
- (iii) including the identity and location of the trustee or escrow agent, **acting as fiduciary**, who is to hold the trust or escrow.

(G) The contract must disclose that the seller reserves the right to assess an extra charge for:

- (i) transportation costs;
- (ii) services or merchandise incurred in the transport of human remains a distance greater than twenty-five (25) miles from the seller's place of business; and
- (iii) service charges necessarily incident to the transport of human remains and in excess of those service charges specified in the contract.

(H) The contract must disclose the following:

- (i) The amount, if any, the seller has elected to receive under subsection (c)(1) or subsection (d)(6).
- (ii) That a commission or fee may be paid to the seller or the seller's agent on a contract funded under subsection (b)(1)(B)(i).

(10) specify that a purchaser has the unrestricted right to designate one (1) or more successor sellers to whom the contract may be transferred under section 13 of this chapter, but that such a transfer is effective only with the consent of the newly designated seller and upon the fulfillment of the other requirements of section 13 of this chapter;

(11) specify that if cash advance items are funded in the contract, the seller agrees to deliver the cash advance items under one (1) of the following alternatives:

(A) Delivery is unconditionally guaranteed at the option of the seller.

(B) Delivery is conditionally guaranteed for a seller and will be equal in value to the total value of the trust or escrow account maintained for the purchaser multiplied by the percentage of the total original contract price represented by cash advance items;

(12) specify that a release from trust or escrow shall occur only upon the seller's delivery of services or merchandise, or both;

(13) permit, at the option of the seller, the incorporation of the trust or escrow language contained in subsection (c) or (d) directly into the contract;

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(14) prohibit the seller from charging any service, transaction, or other type of fee or charge unless the fee is:

(A) authorized under subsections (c)(1) and (d)(6) and section 27 of this chapter; or

(B) included within the definitions contained in section 8 or 11.5 of this chapter.

(c) A trust account authorized and established under this chapter must do all of the following:

(1) Be irrevocable and require either of the following:

(A) The seller deposit the insurance policy used to fund the contract into the trust account. However, for contracts funded after June 30, 1995, with a previously issued insurance policy, the seller may serve instead of a trustee if the seller is qualified to do so under section 11(c) of this chapter.

(B) The seller deposit the cash used to fund the contract into the trust account. However, as consideration for the sale of the contract and any expense incurred by the seller in conjunction with the sale of the contract, the contract must permit the seller to notify, within a ten (10) day period following the date the contract becomes irrevocable, the trustee of its election to receive only up to ten percent (10%) of the seller's original contract price for services or merchandise, or both.

(2) Designate the seller as the beneficiary of the trust.

(3) Designate a trustee qualified under this chapter and authorize the trustee to assess the charges authorized under section 18 of this chapter.

(4) Require that a separate account be maintained in the name of each purchaser.

(5) Require that any interest, dividend, or accumulation in the account be reinvested and added to the principal.

(6) Permit the assets of the several, separate accounts to be commingled for investment purposes.

(7) Require that on receipt of the seller's proof of delivery of services or merchandise the trustee shall remit to the seller the full amount in trust applicable to the purchaser's contract and all of the accumulated interest.

(8) Permit the seller to retain the remaining amount if the amount in the trust account is greater than the seller's total current retail price of all services and merchandise subject to the contract at the time of delivery of all services or merchandise subject to the contract. However, in the case of a contract funded under subsection (b)(1)(B)(ii), the seller may not retain the remaining

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amount but must pay the remaining amount to the entity or individual designated by the insured as the beneficiary of the death benefit proceeds not later than sixty (60) days after the receipt and deposit of the proceeds by the seller. The seller may not qualify as a beneficiary of the remaining amount or the insurance death benefit. In the case of all other contracts funded under this chapter, the seller may opt to return the remaining amount to the individual designated by the purchaser to receive the remainder or to the purchaser's estate.

(9) Require the seller to pay to the trust established under this chapter an amount necessary to restore the trust to the original contract value of all the services or merchandise under the contracts, or parts of the contracts, that remain undelivered, minus any amount the seller is allowed to receive under subdivision (1)(B).

(d) An escrow account authorized and established under this chapter must do all of the following:

(1) Be irrevocable and require that the seller deposit all cash or the insurance policy used to fund the contract into the escrow account.

(2) Designate the seller as the recipient of the escrow funds.

(3) Designate an escrow agent, **acting as fiduciary**, qualified under this chapter to act as escrow agent **acting as fiduciary** and authorize the escrow agent **acting as fiduciary** to assess the charges authorized under section 18 of this chapter.

(4) Require that the escrow account be maintained in the name of the seller and serve as a depository for all cash or insurance policies used to fund contracts sold by the seller.

(5) Permit the investment of and commingling of cash for investment purposes.

(6) Permit the seller to receive an administrative or service fee at the option of the seller. The seller may opt to receive the fee after the day following the date the contract becomes irrevocable. The amount of the fee may not exceed ten percent (10%) of the seller's total contract price for services or merchandise or both.

(7) Require that on delivery of services or merchandise, the escrow agent shall remit to the seller an amount equal to:

(A) the seller's original retail price as set forth in the contract for the services or merchandise delivered; minus

(B) the amount, if any, received by the seller under subdivision (6).

(8) Permit the seller to receive monthly payments of the interest

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1 earned and the appreciation in the value of the escrow assets to
 2 the extent that the total value of the escrow after a payment
 3 authorized under this subdivision is not less than:

4 (A) the original contract value of all services or merchandise
 5 under the contracts, or parts of the contracts that remain
 6 undelivered; minus

7 (B) the amounts, if any, received by the seller under
 8 subdivision (6).

9 **(9) Require the seller to pay to the escrow account established**
 10 **under this chapter an amount necessary to restore the escrow**
 11 **account to the original contract value of all the services or**
 12 **merchandise under the contracts, or parts of the contracts,**
 13 **that remain undelivered, minus any amount the seller is**
 14 **allowed to receive under subdivision (6).**

15 (e) A trust account or an escrow account established under this
 16 section must contain a concise written description of all the provisions
 17 of this chapter that apply to the account.

18 (f) A seller's guarantee of delivery of all services or merchandise
 19 subject to a contract sold by the seller or transferred to a seller is
 20 unconditional except in the instance of one (1) of the following
 21 circumstances:

22 (1) An installment contract funded with cash or an insurance
 23 policy issued in conjunction with the contract is guaranteed to the
 24 extent of the cash paid or death benefits available at the time of
 25 death of the individual for whom services or merchandise are to
 26 be provided.

27 (2) A contract funded with an insurance policy issued previously
 28 and not in conjunction with the contract is guaranteed to the
 29 extent of the death benefit proceeds available at the time of the
 30 individual for whom services or merchandise are to be provided.

31 (3) A contract funded with an insurance policy issued in
 32 conjunction with the contract, but having a limited or qualified
 33 death benefit period, is guaranteed to the extent of the death
 34 benefit proceeds available at the time of the death of the
 35 individual for whom services or merchandise are to be provided.

36 (4) A transportation expense incurred by the seller while
 37 transporting human remains a distance greater than twenty-five
 38 (25) miles from the seller's place of business, plus any charge for
 39 services or merchandise necessarily incident to the transport of
 40 the human remains.

41 (5) The seller agrees to conditionally guarantee the delivery of
 42 cash advance items under subsection (b)(11)(B).

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1 In the instance of unguaranteed delivery, the seller may reduce the
 2 value or number of the services or merchandise subject to the contract
 3 or cash advance items delivered or deliver the services or merchandise
 4 in full on the condition that the seller receives adequate consideration
 5 to compensate the seller for the unguaranteed part of the contract.

6 (g) The entire value of an escrow or trust established under this
 7 chapter may not be considered as a resource in determining a person's
 8 eligibility for Medicaid under IC 12-15-2-17.

9 (h) This chapter does not prohibit a purchaser from immediately
 10 making the trust or escrow required under this chapter irrevocable and
 11 assigning ownership of an insurance policy used to fund a contract to
 12 obtain favorable consideration for Medicaid, Supplemental Security
 13 Income, or another public assistance program under federal or state
 14 law.

15 (i) A seller may not accept or deposit into a trust or escrow account
 16 cash, an insurance policy, or any other property as consideration for
 17 services or merchandise to be provided in the future except in
 18 conjunction with a contract authorized by this chapter.

19 SECTION 9. IC 30-2-13-13 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. (a) Notwithstanding
 21 section 10 of this chapter, as used in this section, "seller" means an
 22 individual, a person doing business as a sole proprietor, a firm, a
 23 corporation, an association, a limited liability company, or a
 24 partnership:

25 (1) contracting to provide prepaid or at-need services or
 26 merchandise, or both, to a named individual; and

27 (2) holding a certificate of authority under this chapter.

28 (b) A purchaser has the option to designate one (1) or more
 29 successor sellers to provide:

30 (1) prepaid services or merchandise; or

31 (2) at-need services or merchandise.

32 A purchaser who exercises the purchaser's option to designate a
 33 successor seller shall give written notice of the designation to the
 34 currently designated seller, successor seller, and trustee or escrow
 35 agent. Only a purchaser may exercise the option to designate a new
 36 seller. However, the designation is ineffective unless the newly
 37 designated seller consents to the designation.

38 (c) If a purchaser designates a successor seller, and the successor
 39 seller consents to the designation, not less than thirty (30) days after
 40 receiving notice under subsection (b), the seller who was previously
 41 designated shall:

42 (1) relinquish and transfer all rights under the contract;

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- (2) transfer to the successor the contract; and
- (3) release from trust or escrow for subsequent deposit to the successor seller's trust or escrow all property being held as consideration for the contract, together with an itemized statement disclosing all services or merchandise delivered as of the date of transfer.

However, a seller who was previously designated to provide the services or merchandise shall comply with section 30 of this chapter. The seller and the successor sellers shall cooperate to ensure that there is no forfeiture or loss of a right or benefit under the contract and that all contract terms are fulfilled. If similar prepaid or at-need services or merchandise are purchased from one (1) or more sellers, the contract that is first in time prevails and is valid.

(d) The trustee shall confirm the transfer to the seller, successor seller, and purchaser by written notice confirming the identity and value of the property transferred.

(e) It is a violation of this chapter for a seller to knowingly induce a purchaser to breach an existing contract that provides for prepaid or at-need services or merchandise.

(f) This section does not abrogate the requirements of IC 25-15-4 concerning contracting for or delivering at-need services and merchandise.

(g) It is a violation of this chapter for a seller to knowingly:

(1) induce a purchaser who has the right to designate a successor seller under subsection (b) to:

(A) make a designation of a successor seller;

(B) breach an existing contract for prepaid or at-need services or merchandise; or

(C) enter into an at-need or prepaid contract calling for the delivery of similar services or merchandise; or

(2) offer a monetary inducement or the exchange or substitution of free or discounted services or merchandise in an effort to induce a purchaser to effect a change in the designation of a seller of prepaid or at-need services or merchandise.

(h) It is a violation of this chapter for a seller to provide free or discounted burial rights:

(1) as an inducement or as consideration for the transfer of a contract; or

(2) in an effort to induce a purchaser to effect a change in the designation of a seller of prepaid or at-need services or merchandise.

SECTION 10. IC 30-2-13-30 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 30. (a) The seller shall maintain accurate records, books, and accounts for each contract sold under this chapter containing the following:

- (1) Copies of all contracts.
- (2) The dates of all contracts.
- (3) The amounts paid and received under each contract.
- (4) The complete name, address, and identification of all parties to each contract.

(b) The seller shall maintain at the seller's principal Indiana business address complete records of all transactions under this chapter that involve the seller. The records may be audited and examined by the board at any reasonable time.

(c) The seller shall maintain all records required by this section for ~~at least~~ **the longer of:**

- (1) **ten (10) years; or**
 - (2) three (3) years after the date of full performance of a contract.
- The records are business records and customer lists within the meaning of IC 24-2-3.

(d) The requirements of this section apply to a seller, a successor seller, and a seller who was previously designated to provide services or merchandise to a purchaser.

SECTION 11. IC 30-2-13-38 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 38. (a) A seller who violates a provision of this chapter commits an uncured deceptive act (as defined in IC 24-5-0.5-2).

(b) A person doing business as a sole proprietor, a firm, a limited liability company, a corporation, an association, or a partnership, but not acting as a seller that:

- (1) sells or advertises prepaid services or merchandise or services or merchandise (as defined in section 8 of this chapter) and fails to obtain the certificate of authority required by section 33 of this chapter; or
- (2) sells or advertises prepaid services or merchandise or services or merchandise (as defined in section 8 of this chapter) after the entity's certificate of authority has:

- (A) expired; or
- (B) been rescinded, revoked, or suspended by the board;

commits a Class A misdemeanor. Each act committed in violation of this subsection constitutes a separate offense.

(c) The following may maintain an action to enjoin an individual or entity from continuing to violate this section:

- (1) The board.

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(2) The attorney general.

(3) The prosecuting attorney of a county in which a violation occurs.

(d) A purchaser has a private right of action against a seller who commits an uncured deceptive act.

(e) **A trustee or escrow agent, acting as a fiduciary, that disburses funds in a trust or escrow account established under this chapter without verifying that the seller has delivered the services or merchandise for which the funds were deposited through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by IC 25-15-9-1 commits a Class A infraction.**

SECTION 12. IC 30-2-13-39 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 39. (a) This section does not apply to a trust funded by the method described in section 11(c) of this chapter.**

(b) A seller may not be an affiliate, a parent, or a subsidiary organization of the trustee or escrow agent, acting as a fiduciary, of a trust or escrow account established after June 30, 2008, to hold consideration paid for services or merchandise subject to a contract entered into under this chapter by the seller and a purchaser.

SECTION 13. IC 30-4-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) A trust is a fiduciary relationship between a person who, as trustee, holds title to property and another person for whom, as beneficiary, the title is held.

(b) Subject to IC 30-4-2-8, the same person may be both the trustee and a beneficiary.

(c) The rules of law contained in this article do not apply to:

- (1) trusts created by operation of law;
- (2) business trusts (as defined in IC 23-5-1);
- (3) security instruments and creditor arrangements;
- (4) voting trusts;
- (5) religious, educational, and cultural institutions, created in other than trust form, except with respect to the application of IC 30-4-5-18 through IC 30-4-5-23 as those sections relate to the maintenance of federal income tax exemption privileges to which an institution is entitled;
- (6) corporations and other entities governed by IC 23-17, except with respect to IC 30-4-5-18 through IC 30-4-5-23 as those sections relate to the maintenance of federal income tax

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1 exemption privileges to which a corporation or other entity is
2 entitled;

3 **(7) except as provided in this article for trusts for a**
4 **benevolent public purpose:**

5 **(A)** prepaid funeral plans;

6 ~~(8)~~ **(B)** trusts for the care and upkeep of cemeteries; **and**

7 ~~(9)~~ **(C)** agreements to furnish funeral services; and

8 ~~(10)~~ **(8)** trusts created or authorized by statute other than this
9 article.

10 (d) IC 30-4-3-2(a) applies to an employee benefit trust that meets
11 the requirements set forth in IC 30-4-3-2(c). However, no other
12 provision of this article applies to an employee benefit trust.

13 SECTION 14. IC 30-4-1-2, AS AMENDED BY P.L.238-2005,
14 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2008]: Sec. 2. As used in this article:

16 (1) "Adult" means any person eighteen (18) years of age or older.

17 (2) "Affiliate" means a parent, descendant, spouse, spouse of a
18 descendant, brother, sister, spouse of a brother or sister,
19 employee, director, officer, partner, joint venturer, a corporation
20 subject to common control with the trustee, a shareholder, or
21 corporation who controls the trustee or a corporation controlled
22 by the trustee other than as a fiduciary, an attorney, or an agent.

23 (3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.

24 (4) "Breach of trust" means a violation by the trustee of any duty
25 which is owed to the settlor or beneficiary.

26 (5) "Charitable trust" means a trust in which all the beneficiaries
27 are the general public or organizations, including trusts,
28 corporations, and associations, and that is organized and operated
29 wholly for religious, charitable, scientific, public safety testing,
30 literary, or educational purposes. The term does not include
31 charitable remainder trusts, charitable lead trusts, pooled income
32 funds, or any other form of split-interest charitable trust that has
33 at least one (1) noncharitable beneficiary.

34 (6) "Court" means a court having jurisdiction over trust matters.

35 (7) "Income", except as otherwise stated in a trust agreement, has
36 the meaning set forth in IC 30-2-14-4.

37 (8) "Income beneficiary" has the meaning set forth in
38 IC 30-2-14-5.

39 (9) "Inventory value" means the cost of property to the settlor or
40 the trustee at the time of acquisition or the market value of the
41 property at the time it is delivered to the trustee, or the value of
42 the property as finally determined for purposes of an estate or

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inheritance tax.

(10) "Minor" means any person under the age of eighteen (18) years.

(11) "Person" has the meaning set forth in IC 30-2-14-9.

(12) "Personal representative" means an executor or administrator of a decedent's or absentee's estate, guardian of the person or estate, guardian ad litem or other court appointed representative, next friend, parent or custodian of a minor, attorney in fact, or custodian of an incapacitated person (as defined in IC 29-3-1-7.5).

(13) "Principal" has the meaning set forth in IC 30-2-14-10.

(14) "Qualified beneficiary" means:

(A) a beneficiary who, on the date the beneficiary's qualification is determined:

(i) is a distributee or permissible distributee of trust income or principal;

(ii) would be a distributee or permissible distributee of trust income or principal if the interest of the distributee described in item (i) terminated on that date;

(iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;

(iv) has sent the trustee a request for notice;

(v) is a charitable organization expressly designated to receive distributions under the terms of a charitable trust;

(vi) is a person appointed to enforce a trust for the care of an animal under IC 30-4-2-18; or

(vii) is a person appointed to enforce a trust for a noncharitable purpose under IC 30-4-2-19; or

(B) the attorney general, if the trust is a charitable trust having its principal place of administration in Indiana.

(15) "Remainderman" means a beneficiary entitled to principal, including income which has been accumulated and added to the principal.

(16) "Settlor" means a person who establishes a trust including the testator of a will under which a trust is created.

(17) "Trust estate" means the trust property and the income derived from its use.

(18) "Trust for a benevolent public purpose" means a charitable trust (as defined in subdivision (5)), a split-interest trust (as defined in Section 4947 of the Internal Revenue Code), **a perpetual care fund or an endowment care fund established under IC 23-14-48-2, a prepaid funeral plan or funeral trust**

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established under IC 30-2-9, a funeral trust established under IC 30-2-10, a trust or an escrow account created from payments of funeral, burial services, or merchandise in advance of need described in IC 30-2-13, and any other form of split-interest charitable trust that has both charitable and noncharitable beneficiaries, including but not limited to charitable remainder trusts, charitable lead trusts, and charitable pooled income funds.

(19) "Trust property" means property either placed in trust or purchased or otherwise acquired by the trustee for the trust regardless of whether the trust property is titled in the name of the trustee or the name of the trust.

(20) "Trustee" has the meaning set forth in IC 30-2-14-13.

SECTION 15. IC 30-4-5.5-1, AS ADDED BY P.L.245-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) This section applies **if to the following:**

(1) A trustee of a benevolent trust, ~~does any of the following:~~ **including a perpetual care fund or endowment care fund established under IC 23-14-48 or a prepaid funeral trust or escrow account established under IC 30-2-9, IC 30-2-10, or IC 30-2-13.**

(2) A cemetery owner.

(3) A funeral home.

(4) A beneficiary of a contract entered into under IC 30-2-9.

(5) A seller (as defined in IC 30-2-13-10) under IC 30-2-13.

(6) Any other person that holds a perpetual care fund, an endowment care fund, or a prepaid funeral trust fund.

(b) A person described in subsection (a) may not do any of the following:

(1) ~~Commits~~ **Commit** a breach of trust.

(2) ~~Violates~~ **Violate** the mandate of a charitable trust.

(3) ~~Violates~~ **Violate** a duty listed in this article.

(4) **Fail to comply with a requirement or prohibition set forth in any of the following:**

(A) IC 23-14-48.

(B) IC 23-14-48.5.

(C) IC 23-14-49.

(D) IC 23-14-51.

(E) IC 30-2-9.

(F) IC 30-2-10.

(G) IC 30-2-13.

(H) IC 30-4.

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~~(b)~~ (c) The attorney general may petition a court to issue one (1) or more of the following remedies for ~~an action~~ **a breach, violation, or failure** enumerated in subsection ~~(a)~~ **(b)**:

- (1) Injunctive relief.
- (2) Appointment of temporary or permanent receivers.
- (3) Permanent removal of trustees.
- (4) Appointment of permanent replacement trustees subject to court approval.

A remedy under this subsection is in addition to any other remedy.

~~(c)~~ (d) The attorney general may seek a remedy listed in subsection ~~(b)~~ (c) against a trustee, ~~or a trust, or any other person described in subsection (a) for a breach, violation, or failure enumerated in subsection (b).~~

(e) A court in which an action is brought under this section may do the following:

- (1) Issue a temporary restraining order, preliminary injunction, or permanent injunction.
- (2) Order a trustee, an escrow agent, a seller (as defined in IC 30-2-13-10), a cemetery owner, or a funeral home to pay restitution or money unlawfully received or retained from purchasers and deposit the restitution or money into an escrow account for distribution to aggrieved purchasers.
- (3) Order a trustee, an escrow agent, a seller (as defined in IC 30-2-13-10), a cemetery owner, or a funeral home to reimburse the state for reasonable costs incurred by the attorney general in investigating and prosecuting a violation of this section.
- (4) Impose civil penalties.
- (5) Provide for the appointment of a receiver.

SECTION 16. [EFFECTIVE UPON PASSAGE] (a) The state board of funeral and cemetery service established by IC 25-15-9-1 shall adopt rules under IC 4-22-2 to implement:

- (1) IC 30-2-9-7(c);
- (2) IC 30-2-10-9(c); and
- (3) IC 30-2-13-38(e);

all as added by this act, before January 1, 2009.

(b) This SECTION expires January 2, 2009.

SECTION 17. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the probate code study commission established by IC 2-5-16-2.

(b) The commission shall study and make findings and recommendations concerning the following:

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- 1 (1) Whether current law is adequate to:
- 2 (A) protect money and property placed in cemetery
- 3 perpetual care trusts and preneed funeral trusts; and
- 4 (B) ensure that the money is used for its intended purposes.
- 5 (2) Whether additional restrictions, prohibitions, or rules are
- 6 needed concerning cemetery perpetual care trusts and
- 7 preneed funeral trusts to sufficiently protect consumers and
- 8 the general public.
- 9 (3) Whether it is appropriate to revise Indiana law concerning
- 10 funeral and cemetery trusts.
- 11 (4) Approaches used by other states to regulate funeral and
- 12 cemetery trusts, trustees, funeral service and merchandise
- 13 sellers, funeral home owners and operators, and cemetery
- 14 owners.
- 15 (5) Any other matter concerning funeral and cemetery trusts
- 16 the commission considers appropriate.
- 17 (c) The commission shall report its finding and
- 18 recommendations to the legislative council in an electronic format
- 19 under IC 5-14-6 not later than November 1, 2008.
- 20 (d) This SECTION expires November 2, 2008.
- 21 SECTION 18. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1026, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning funerals and cemeteries and to make an appropriation.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 23-14-48-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) The owner of each cemetery shall provide for the creation and establishment of an irrevocable perpetual care fund.

(b) The principal of a perpetual care fund established under this section shall permanently remain intact, except as provided in this chapter. The principal shall be known as the "perpetual care fund" or "endowment care fund" of the cemetery. **The owner of a cemetery shall pay to the perpetual care fund or endowment care fund any amount necessary to maintain the principal in the fund.**

(c) Fifty percent (50%) of any appreciation of the principal of the fund may be withdrawn annually not more than forty-five (45) days after the end of the fund's fiscal year.

(d) Any income earned by the fund during the fiscal year may be withdrawn quarterly during the fund's fiscal year.

(e) The income from a fund established under this section and any withdrawal of the appreciation of the principal under subsection (c) shall be devoted to the perpetual care of the cemetery.

(f) The fund established by this chapter is not subject to attachment by a creditor unless the underlying debt was incurred for the perpetual care or endowment care (as defined in IC 23-14-33-30) of the cemetery for which the fund was established.

SECTION 2. IC 23-14-48-3, AS AMENDED BY P.L.65-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) A perpetual care fund shall be established under this chapter as follows:

(1) In the case of a cemetery for earth burials, by the application and payment to the perpetual care fund of an amount at least equal to:

- (A) fifteen percent (15%) of the sale price; or
 - (B) eighty cents (\$0.80) per square foot of area;
- of each burial plot sold or transferred, whichever is greater.

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(2) In the case of a community or public mausoleum, or community or public garden crypt, by the application and payment to the perpetual care fund of an amount at least equal to:

(A) eight percent (8%) of the sale price; or

(B) one hundred dollars (\$100) per crypt sold or transferred; whichever is greater.

(3) In the case of a community columbarium, by the application and payment to the perpetual care fund of an amount at least equal to twenty dollars (\$20) per niche sold or transferred.

(b) From the sale price, any payment on the sale price, or in a nonmonetary transfer, the owner shall pay an amount in proportion to the requirements of subsection (a)(1) through (a)(3) to the care fund. The payment must be in cash and shall be deposited with the ~~custodian~~ or trustee of the fund:

(1) not more than thirty (30) days after the end of the month in which payments on the sale are received; or

(2) not more than thirty (30) days after the end of the month in which there was a transfer which did not involve a sale.

(c) The payments required by this section are required to be paid only on the original sale or transfer and not again for any subsequent resale or transfer of the same ground interment rights, crypt, or niche.

(d) The ~~custodian~~ or trustee of a fund established under this chapter must keep the fund segregated from any other fund or account belonging to the owner of the cemetery.

SECTION 3. IC 23-14-48-7, AS AMENDED BY P.L.65-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) Not more than ninety (90) days after the end of the fiscal year of a cemetery to which this chapter applies, the custodian or trustee of the perpetual care fund of the cemetery shall prepare and file with the owner of the cemetery a detailed accounting and report of the perpetual care fund for the preceding fiscal year. The report:

(1) must include, among other things, a properly itemized listing of the securities in which the funds are invested; and

(2) shall be available for inspection and copying at all times by any owner of or holder of a burial right in the cemetery at the usual place at which the regular business of the cemetery is transacted.

(b) Not more than one hundred five (105) days after the end of the fiscal year of a cemetery to which this chapter applies, the ~~custodian~~ or trustee of the perpetual care fund of the cemetery shall file the report required under subsection (a) with the state board of funeral and

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cemetery service.

(c) The state board of funeral and cemetery service may audit or order an audit of the perpetual care fund of a cemetery if the state board of funeral and cemetery service determines that the ~~custodian or~~ trustee of the perpetual care fund is not complying with the requirements set forth in subsections (a) and (b). The cemetery that is the subject of the audit shall pay all costs associated with the audit.

(d) The owner of a cemetery shall maintain a report required by this section for the longer of:

- (1) ten (10) years; or**
- (2) three (3) years after the date the owner sells or otherwise transfers the cemetery.**

SECTION 4. IC 23-14-77 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 77. Containers Used to Encase Human Remains

Sec. 1. A person who sells or otherwise furnishes to another person a container that:

- (1) will be used to encase the remains of a deceased individual; and**
- (2) is not airtight and watertight;**

shall inform the other person in writing that the container is not airtight and watertight before the person sells or otherwise furnishes the container to the other person.

Sec. 2. A person who violates this chapter commits a Class B infraction."

Page 1, line 3, delete "JULY 1, 2008]: and insert "JANUARY 1, 2009]:".

Page 1, line 13, delete "the death of the person for whose funeral" and insert ":

- (1) the death of the settler of the contract; and**
- (2) that the beneficiary fully performed all funeral and burial services provided for in the contract;**

through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by IC 25-15-9-1 commits a Class A infraction."

Page 1, delete line 14, begin a new paragraph and insert:

"SECTION 6. IC 30-2-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. The contract under which funds are accepted under this chapter must be in writing and contain, as a minimum, the following provisions:

- (1) Details of the professional services, facilities, equipment, and

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a description of merchandise to be provided by the beneficiary. **If the merchandise includes a container that:**

(A) will be used to encase the remains of a deceased individual; and

(B) is not airtight and watertight;

the details must include a written statement indicating that the container is not airtight and watertight.

(2) A provision that the beneficiary may provide merchandise of equal or better quality if the merchandise contracted for is no longer available at the time the merchandise is to be provided.

(3) The place of the funeral and the place of the burial or other final disposition to be made of the decedent.

(4) An acknowledgment by the settlor that ~~he~~ **the settlor** understands the irrevocable nature of the trust.

(5) A provision for reasonable adjustment of the services, or cost of services, if the body is transported a distance greater than twenty-five (25) miles to the place of funeral or the place of burial or final disposition and transportation of a distance in excess of twenty-five (25) miles was not contemplated at the time of the execution of the contract.

(6) A provision for full payment of the contract amount by the settlor, a description of the manner in which the funds are to be deposited, and a statement that the interest will accrue to the trust account and a further statement that the principal and interest earned shall inure to the beneficiary to cover all the costs incident to the beneficiary's performance of the contract, any excess to be refunded to the estate of the settlor or to the heirs at law.

(7) The settlor's name, address, and social security number.

(8) The date that the funeral trust is executed by the settlor.

(9) The trustee's name and address.

(10) The beneficiary's license number issued by the state board of funeral service.

(11) A provision that except under the circumstances described in subsection (12), only the settlor may change the beneficiary, that ~~he~~ **the settlor** may make the change at any time, and that the change is not effective until written notification is given to the original beneficiary.

(12) A provision that allows the state board of funeral service to change the beneficiary by naming a funeral home as new beneficiary if the original beneficiary becomes deceased, dissolved, terminated, or otherwise loses beneficiary status as a licensee of the state board, and the settlor or ~~his~~ **the settlor's**

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guardian or personal representative fails to select a qualified beneficiary.

Page 1, line 17, delete "JULY 1, 2008]; and insert "JANUARY 1, 2009]:".

Page 2, line 8, delete "in the absence of satisfactory evidence that the" and insert "**without verifying:**

(1) the death of the settler of the contract; and

(2) that the beneficiary fully performed all funeral and burial services provided for in the contract;

through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by IC 25-15-9-1 commits a Class A infraction."

Page 2, delete lines 9 through 10, begin a new paragraph and insert:

"SECTION 8. IC 30-2-13-12.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12.5. (a) This section applies to the following contracts entered into or established under this chapter after June 30, 1999:

(1) Contracts for prepaid services.

(2) Contracts for prepaid merchandise.

(3) Trusts or escrows established to hold consideration paid for services or merchandise subject to a contract entered into under this chapter.

(b) A contract between a purchaser and a seller must:

(1) specify that the consideration for the contract is:

(A) cash, payable either in a lump sum or in installments; or

(B) an insurance policy that is:

(i) newly issued in conjunction with and integral to the contract;

(ii) issued previously in a transaction separate and distinct from the contract; or

(iii) both.

If a contract is funded with an insurance policy, the ownership of the policy must be irrevocably assigned to a trustee, and the seller may not borrow against, pledge, withdraw, or impair the cash value of the policy;

(2) specify that only the purchaser, acting by written notice to the seller, may revoke the contract within thirty (30) days after the date the contract is signed by the purchaser and the seller and that the contract becomes irrevocable upon the expiration of the thirty (30) day period;

(3) specify that, if the contract is revoked, the seller shall refund and return to the purchaser, without interest, the cash or insurance

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policy used to fund the contract;

(4) specify that not more than thirty (30) days after the contract is signed by the purchaser and the seller, the whole of the cash or insurance policy serving as consideration for the contract must be deposited into a trust or escrow authorized by subsection (c) or (d). However, a seller may elect to serve as trustee of a previously existing life insurance contract;

(5) except as provided in subsection (f), unconditionally require that the seller shall deliver all services or merchandise, or both, specified in the contract and receive as consideration for the delivery of services or merchandise, or both, only the cash or insurance policy held in trust or escrow without regard to the solvency of the insurer or the adequacy or loss in value of any cash deposit or insurance policy used to fund a contract;

(6) except as provided in subsection (f), prohibit a seller from imposing additional charges to recover any shortage or difference between the retail prices for services or merchandise, or both, in effect on the date of delivery of the services or merchandise, or both, and the value of the trust or escrow applicable to the contract on the date of delivery;

(7) require that a seller accepting the transfer of a contract permitted under section 13 of this chapter shall honor the requirements and obligations of the contract;

(8) permit the seller to assess a finance charge on a contract sold on an installment basis and require that the seller disclose to the purchaser the applicable requirements of federal and Indiana law;

(9) provide that the contract must comply with the following requirements:

(A) The contract must be made in a form that is:

- (i) written in clear and understandable language; and
- (ii) printed in a size and style of type that is easy to read.

(B) The contract must describe the services, merchandise, or cash advance items being purchased. **If the merchandise includes a container that:**

- (i) will be used to encase the remains of a deceased individual; and**
- (ii) is not airtight and watertight;**

the contract must include a written statement indicating that the container is not airtight and watertight.

(C) The contract must identify the following by name, address, and telephone number:

- (i) The seller.

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(ii) The purchaser.

(iii) The contract beneficiary if the beneficiary is an individual other than the purchaser.

(D) The contract must contain the seller's certificate of authority number and the date of the contract.

(E) The contract must provide that if an item of the particular services or merchandise specified in the contract is unavailable at the time of delivery, the seller shall deliver services or merchandise similar in style, quality, and of equal value to the unavailable item in the place of the item.

(F) The contract must disclose the precise manner in which the contract is to be funded by:

(i) identifying the consideration for the contract;

(ii) identifying the name, number, if known, and issuer of any insurance policy used to fund the contract; and

(iii) including the identity and location of the trustee or escrow agent, **acting as fiduciary**, who is to hold the trust or escrow.

(G) The contract must disclose that the seller reserves the right to assess an extra charge for:

(i) transportation costs;

(ii) services or merchandise incurred in the transport of human remains a distance greater than twenty-five (25) miles from the seller's place of business; and

(iii) service charges necessarily incident to the transport of human remains and in excess of those service charges specified in the contract.

(H) The contract must disclose the following:

(i) The amount, if any, the seller has elected to receive under subsection (c)(1) or subsection (d)(6).

(ii) That a commission or fee may be paid to the seller or the seller's agent on a contract funded under subsection (b)(1)(B)(i).

(10) specify that a purchaser has the unrestricted right to designate one (1) or more successor sellers to whom the contract may be transferred under section 13 of this chapter, but that such a transfer is effective only with the consent of the newly designated seller and upon the fulfillment of the other requirements of section 13 of this chapter;

(11) specify that if cash advance items are funded in the contract, the seller agrees to deliver the cash advance items under one (1) of the following alternatives:

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- (A) Delivery is unconditionally guaranteed at the option of the seller.
- (B) Delivery is conditionally guaranteed for a seller and will be equal in value to the total value of the trust or escrow account maintained for the purchaser multiplied by the percentage of the total original contract price represented by cash advance items;
- (12) specify that a release from trust or escrow shall occur only upon the seller's delivery of services or merchandise, or both;
- (13) permit, at the option of the seller, the incorporation of the trust or escrow language contained in subsection (c) or (d) directly into the contract;
- (14) prohibit the seller from charging any service, transaction, or other type of fee or charge unless the fee is:
 - (A) authorized under subsections (c)(1) and (d)(6) and section 27 of this chapter; or
 - (B) included within the definitions contained in section 8 or 11.5 of this chapter.
- (c) A trust account authorized and established under this chapter must do all of the following:
 - (1) Be irrevocable and require either of the following:
 - (A) The seller deposit the insurance policy used to fund the contract into the trust account. However, for contracts funded after June 30, 1995, with a previously issued insurance policy, the seller may serve instead of a trustee if the seller is qualified to do so under section 11(c) of this chapter.
 - (B) The seller deposit the cash used to fund the contract into the trust account. However, as consideration for the sale of the contract and any expense incurred by the seller in conjunction with the sale of the contract, the contract must permit the seller to notify, within a ten (10) day period following the date the contract becomes irrevocable, the trustee of its election to receive only up to ten percent (10%) of the seller's original contract price for services or merchandise, or both.
 - (2) Designate the seller as the beneficiary of the trust.
 - (3) Designate a trustee qualified under this chapter and authorize the trustee to assess the charges authorized under section 18 of this chapter.
 - (4) Require that a separate account be maintained in the name of each purchaser.
 - (5) Require that any interest, dividend, or accumulation in the account be reinvested and added to the principal.

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(6) Permit the assets of the several, separate accounts to be commingled for investment purposes.

(7) Require that on receipt of the seller's proof of delivery of services or merchandise the trustee shall remit to the seller the full amount in trust applicable to the purchaser's contract and all of the accumulated interest.

(8) Permit the seller to retain the remaining amount if the amount in the trust account is greater than the seller's total current retail price of all services and merchandise subject to the contract at the time of delivery of all services or merchandise subject to the contract. However, in the case of a contract funded under subsection (b)(1)(B)(ii), the seller may not retain the remaining amount but must pay the remaining amount to the entity or individual designated by the insured as the beneficiary of the death benefit proceeds not later than sixty (60) days after the receipt and deposit of the proceeds by the seller. The seller may not qualify as a beneficiary of the remaining amount or the insurance death benefit. In the case of all other contracts funded under this chapter, the seller may opt to return the remaining amount to the individual designated by the purchaser to receive the remainder or to the purchaser's estate.

(9) Require the seller to pay to the trust established under this chapter an amount necessary to restore the trust to the original contract value of all the services or merchandise under the contracts, or parts of the contracts, that remain undelivered, minus any amount the seller is allowed to receive under subdivision (1)(B).

(d) An escrow account authorized and established under this chapter must do all of the following:

(1) Be irrevocable and require that the seller deposit all cash or the insurance policy used to fund the contract into the escrow account.

(2) Designate the seller as the recipient of the escrow funds.

(3) Designate an escrow agent, **acting as fiduciary**, qualified under this chapter to act as escrow agent **acting as fiduciary** and authorize the escrow agent **acting as fiduciary** to assess the charges authorized under section 18 of this chapter.

(4) Require that the escrow account be maintained in the name of the seller and serve as a depository for all cash or insurance policies used to fund contracts sold by the seller.

(5) Permit the investment of and commingling of cash for investment purposes.

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(6) Permit the seller to receive an administrative or service fee at the option of the seller. The seller may opt to receive the fee after the day following the date the contract becomes irrevocable. The amount of the fee may not exceed ten percent (10%) of the seller's total contract price for services or merchandise or both.

(7) Require that on delivery of services or merchandise, the escrow agent shall remit to the seller an amount equal to:

(A) the seller's original retail price as set forth in the contract for the services or merchandise delivered; minus

(B) the amount, if any, received by the seller under subdivision (6).

(8) Permit the seller to receive monthly payments of the interest earned and the appreciation in the value of the escrow assets to the extent that the total value of the escrow after a payment authorized under this subdivision is not less than:

(A) the original contract value of all services or merchandise under the contracts, or parts of the contracts that remain undelivered; minus

(B) the amounts, if any, received by the seller under subdivision (6).

(9) Require the seller to pay to the escrow account established under this chapter an amount necessary to restore the escrow account to the original contract value of all the services or merchandise under the contracts, or parts of the contracts, that remain undelivered, minus any amount the seller is allowed to receive under subdivision (6).

(e) A trust account or an escrow account established under this section must contain a concise written description of all the provisions of this chapter that apply to the account.

(f) A seller's guarantee of delivery of all services or merchandise subject to a contract sold by the seller or transferred to a seller is unconditional except in the instance of one (1) of the following circumstances:

(1) An installment contract funded with cash or an insurance policy issued in conjunction with the contract is guaranteed to the extent of the cash paid or death benefits available at the time of death of the individual for whom services or merchandise are to be provided.

(2) A contract funded with an insurance policy issued previously and not in conjunction with the contract is guaranteed to the extent of the death benefit proceeds available at the time of the individual for whom services or merchandise are to be provided.

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(3) A contract funded with an insurance policy issued in conjunction with the contract, but having a limited or qualified death benefit period, is guaranteed to the extent of the death benefit proceeds available at the time of the death of the individual for whom services or merchandise are to be provided.

(4) A transportation expense incurred by the seller while transporting human remains a distance greater than twenty-five (25) miles from the seller's place of business, plus any charge for services or merchandise necessarily incident to the transport of the human remains.

(5) The seller agrees to conditionally guarantee the delivery of cash advance items under subsection (b)(11)(B).

In the instance of unguaranteed delivery, the seller may reduce the value or number of the services or merchandise subject to the contract or cash advance items delivered or deliver the services or merchandise in full on the condition that the seller receives adequate consideration to compensate the seller for the unguaranteed part of the contract.

(g) The entire value of an escrow or trust established under this chapter may not be considered as a resource in determining a person's eligibility for Medicaid under IC 12-15-2-17.

(h) This chapter does not prohibit a purchaser from immediately making the trust or escrow required under this chapter irrevocable and assigning ownership of an insurance policy used to fund a contract to obtain favorable consideration for Medicaid, Supplemental Security Income, or another public assistance program under federal or state law.

(i) A seller may not accept or deposit into a trust or escrow account cash, an insurance policy, or any other property as consideration for services or merchandise to be provided in the future except in conjunction with a contract authorized by this chapter.

SECTION 9. IC 30-2-13-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. (a) Notwithstanding section 10 of this chapter, as used in this section, "seller" means an individual, a person doing business as a sole proprietor, a firm, a corporation, an association, a limited liability company, or a partnership:

(1) contracting to provide prepaid or at-need services or merchandise, or both, to a named individual; and

(2) holding a certificate of authority under this chapter.

(b) A purchaser has the option to designate one (1) or more successor sellers to provide:

(1) prepaid services or merchandise; or

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(2) at-need services or merchandise.

A purchaser who exercises the purchaser's option to designate a successor seller shall give written notice of the designation to the currently designated seller, successor seller, and trustee or escrow agent. Only a purchaser may exercise the option to designate a new seller. However, the designation is ineffective unless the newly designated seller consents to the designation.

(c) If a purchaser designates a successor seller, and the successor seller consents to the designation, not less than thirty (30) days after receiving notice under subsection (b), the seller who was previously designated shall:

- (1) relinquish and transfer all rights under the contract;
- (2) transfer to the successor the contract; and
- (3) release from trust or escrow for subsequent deposit to the successor seller's trust or escrow all property being held as consideration for the contract, together with an itemized statement disclosing all services or merchandise delivered as of the date of transfer.

However, a seller who was previously designated to provide the services or merchandise shall comply with section 30 of this chapter. The seller and the successor sellers shall cooperate to ensure that there is no forfeiture or loss of a right or benefit under the contract and that all contract terms are fulfilled. If similar prepaid or at-need services or merchandise are purchased from one (1) or more sellers, the contract that is first in time prevails and is valid.

(d) The trustee shall confirm the transfer to the seller, successor seller, and purchaser by written notice confirming the identity and value of the property transferred.

(e) It is a violation of this chapter for a seller to knowingly induce a purchaser to breach an existing contract that provides for prepaid or at-need services or merchandise.

(f) This section does not abrogate the requirements of IC 25-15-4 concerning contracting for or delivering at-need services and merchandise.

(g) It is a violation of this chapter for a seller to knowingly:

- (1) induce a purchaser who has the right to designate a successor seller under subsection (b) to:
 - (A) make a designation of a successor seller;
 - (B) breach an existing contract for prepaid or at-need services or merchandise; or
 - (C) enter into an at-need or prepaid contract calling for the delivery of similar services or merchandise; or

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(2) offer a monetary inducement or the exchange or substitution of free or discounted services or merchandise in an effort to induce a purchaser to effect a change in the designation of a seller of prepaid or at-need services or merchandise.

(h) It is a violation of this chapter for a seller to provide free or discounted burial rights:

- (1) as an inducement or as consideration for the transfer of a contract; or
- (2) in an effort to induce a purchaser to effect a change in the designation of a seller of prepaid or at-need services or merchandise.

SECTION 10. IC 30-2-13-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 30. (a) The seller shall maintain accurate records, books, and accounts for each contract sold under this chapter containing the following:

- (1) Copies of all contracts.
- (2) The dates of all contracts.
- (3) The amounts paid and received under each contract.
- (4) The complete name, address, and identification of all parties to each contract.

(b) The seller shall maintain at the seller's principal Indiana business address complete records of all transactions under this chapter that involve the seller. The records may be audited and examined by the board at any reasonable time.

(c) The seller shall maintain all records required by this section for **at least the longer of:**

- (1) **ten (10) years; or**
- (2) three (3) years after the date of full performance of a contract.

The records are business records and customer lists within the meaning of IC 24-2-3.

(d) The requirements of this section apply to a seller, a successor seller, and a seller who was previously designated to provide services or merchandise to a purchaser."

Page 2, line 12, delete "JULY 1, 2008]; and insert "JANUARY 1, 2009]:".

Page 2, line 40, after "deposited" insert "**through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by IC 25-15-9-1**".

Page 3, after line 9, begin a new paragraph and insert:

"SECTION 13. IC 30-4-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) A trust is a fiduciary relationship between a person who, as trustee, holds title to

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property and another person for whom, as beneficiary, the title is held.

(b) Subject to IC 30-4-2-8, the same person may be both the trustee and a beneficiary.

(c) The rules of law contained in this article do not apply to:

- (1) trusts created by operation of law;
- (2) business trusts (as defined in IC 23-5-1);
- (3) security instruments and creditor arrangements;
- (4) voting trusts;
- (5) religious, educational, and cultural institutions, created in other than trust form, except with respect to the application of IC 30-4-5-18 through IC 30-4-5-23 as those sections relate to the maintenance of federal income tax exemption privileges to which an institution is entitled;
- (6) corporations and other entities governed by IC 23-17, except with respect to IC 30-4-5-18 through IC 30-4-5-23 as those sections relate to the maintenance of federal income tax exemption privileges to which a corporation or other entity is entitled;
- (7) **except as provided in this article for trusts for a benevolent public purpose:**
 - (A) prepaid funeral plans;
 - ~~(8)~~ (B) trusts for the care and upkeep of cemeteries; **and**
 - ~~(9)~~ (C) agreements to furnish funeral services; and
 - ~~(+0)~~ (8) trusts created or authorized by statute other than this article.

(d) IC 30-4-3-2(a) applies to an employee benefit trust that meets the requirements set forth in IC 30-4-3-2(c). However, no other provision of this article applies to an employee benefit trust.

SECTION 14. IC 30-4-1-2, AS AMENDED BY P.L.238-2005, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. As used in this article:

- (1) "Adult" means any person eighteen (18) years of age or older.
- (2) "Affiliate" means a parent, descendant, spouse, spouse of a descendant, brother, sister, spouse of a brother or sister, employee, director, officer, partner, joint venturer, a corporation subject to common control with the trustee, a shareholder, or corporation who controls the trustee or a corporation controlled by the trustee other than as a fiduciary, an attorney, or an agent.
- (3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.
- (4) "Breach of trust" means a violation by the trustee of any duty which is owed to the settlor or beneficiary.
- (5) "Charitable trust" means a trust in which all the beneficiaries

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are the general public or organizations, including trusts, corporations, and associations, and that is organized and operated wholly for religious, charitable, scientific, public safety testing, literary, or educational purposes. The term does not include charitable remainder trusts, charitable lead trusts, pooled income funds, or any other form of split-interest charitable trust that has at least one (1) noncharitable beneficiary.

(6) "Court" means a court having jurisdiction over trust matters.

(7) "Income", except as otherwise stated in a trust agreement, has the meaning set forth in IC 30-2-14-4.

(8) "Income beneficiary" has the meaning set forth in IC 30-2-14-5.

(9) "Inventory value" means the cost of property to the settlor or the trustee at the time of acquisition or the market value of the property at the time it is delivered to the trustee, or the value of the property as finally determined for purposes of an estate or inheritance tax.

(10) "Minor" means any person under the age of eighteen (18) years.

(11) "Person" has the meaning set forth in IC 30-2-14-9.

(12) "Personal representative" means an executor or administrator of a decedent's or absentee's estate, guardian of the person or estate, guardian ad litem or other court appointed representative, next friend, parent or custodian of a minor, attorney in fact, or custodian of an incapacitated person (as defined in IC 29-3-1-7.5).

(13) "Principal" has the meaning set forth in IC 30-2-14-10.

(14) "Qualified beneficiary" means:

(A) a beneficiary who, on the date the beneficiary's qualification is determined:

- (i) is a distributee or permissible distributee of trust income or principal;
- (ii) would be a distributee or permissible distributee of trust income or principal if the interest of the distributee described in item (i) terminated on that date;
- (iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;
- (iv) has sent the trustee a request for notice;
- (v) is a charitable organization expressly designated to receive distributions under the terms of a charitable trust;
- (vi) is a person appointed to enforce a trust for the care of an animal under IC 30-4-2-18; or

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(vii) is a person appointed to enforce a trust for a noncharitable purpose under IC 30-4-2-19; or

(B) the attorney general, if the trust is a charitable trust having its principal place of administration in Indiana.

(15) "Remainderman" means a beneficiary entitled to principal, including income which has been accumulated and added to the principal.

(16) "Settlor" means a person who establishes a trust including the testator of a will under which a trust is created.

(17) "Trust estate" means the trust property and the income derived from its use.

(18) "Trust for a benevolent public purpose" means a charitable trust (as defined in subdivision (5)), a split-interest trust (as defined in Section 4947 of the Internal Revenue Code), **a perpetual care fund or an endowment care fund established under IC 23-14-48-2, a prepaid funeral plan or funeral trust established under IC 30-2-9, a funeral trust established under IC 30-2-10, a trust or an escrow account created from payments of funeral, burial services, or merchandise in advance of need described in IC 30-2-13,** and any other form of split-interest charitable trust that has both charitable and noncharitable beneficiaries, including but not limited to charitable remainder trusts, charitable lead trusts, and charitable pooled income funds.

(19) "Trust property" means property either placed in trust or purchased or otherwise acquired by the trustee for the trust regardless of whether the trust property is titled in the name of the trustee or the name of the trust.

(20) "Trustee" has the meaning set forth in IC 30-2-14-13.

SECTION 15. IC 30-4-5.5-1, AS ADDED BY P.L.245-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) This section applies **if to the following:**

(1) A trustee of a benevolent trust, ~~does any of the following:~~ **including a perpetual care fund or endowment care fund established under IC 23-14-48 or a prepaid funeral trust or escrow account established under IC 30-2-9, IC 30-2-10, or IC 30-2-13.**

(2) A cemetery owner.

(3) A funeral home.

(4) A beneficiary of a contract entered into under IC 30-2-9.

(5) A seller (as defined in IC 30-2-13-10) under IC 30-2-13.

(6) Any other person that holds a perpetual care fund, an

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endowment care fund, or a prepaid funeral trust fund.

(b) A person described in subsection (a) may not do any of the following:

- (1) ~~Commits~~ **Commit** a breach of trust.
- (2) ~~Violates~~ **Violate** the mandate of a charitable trust.
- (3) ~~Violates~~ **Violate** a duty listed in this article.
- (4) **Fail to comply with a requirement or prohibition set forth in any of the following:**
 - (A) IC 23-14-48.
 - (B) IC 23-14-48.5.
 - (C) IC 23-14-49.
 - (D) IC 23-14-51.
 - (E) IC 30-2-9.
 - (F) IC 30-2-10.
 - (G) IC 30-2-13.
 - (H) IC 30-4.

~~(b)~~ (c) The attorney general may petition a court to issue one (1) or more of the following remedies for ~~an action~~ **a breach, violation, or failure** enumerated in subsection ~~(a)~~ **(b)**:

- (1) Injunctive relief.
- (2) Appointment of temporary or permanent receivers.
- (3) Permanent removal of trustees.
- (4) Appointment of permanent replacement trustees subject to court approval.

A remedy under this subsection is in addition to any other remedy.

~~(c)~~ (d) The attorney general may seek a remedy listed in subsection ~~(b)~~ (c) against a trustee, ~~or a trust, or any other person described in subsection (a) for a breach, violation, or failure~~ enumerated in subsection (b).

(e) A court in which an action is brought under this section may do the following:

- (1) **Issue a temporary restraining order, preliminary injunction, or permanent injunction.**
- (2) **Order a trustee, an escrow agent, a seller (as defined in IC 30-2-13-10), a cemetery owner, or a funeral home to pay restitution or money unlawfully received or retained from purchasers and deposit the restitution or money into an escrow account for distribution to aggrieved purchasers.**
- (3) **Order a trustee, an escrow agent, a seller (as defined in IC 30-2-13-10), a cemetery owner, or a funeral home to reimburse the state for reasonable costs incurred by the attorney general in investigating and prosecuting a violation**

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of this section.

(4) Impose civil penalties.

(5) Provide for the appointment of a receiver.

SECTION 16. [EFFECTIVE UPON PASSAGE] (a) The state board of funeral and cemetery service established by IC 25-15-9-1 shall adopt rules under IC 4-22-2 to implement:

(1) IC 30-2-9-7(c);

(2) IC 30-2-10-9(c); and

(3) IC 30-2-13-38(e);

all as added by this act, before January 1, 2009.

(b) This SECTION expires January 2, 2009.

SECTION 17. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the probate code study commission established by IC 2-5-16-2.

(b) The commission shall study and make findings and recommendations concerning the following:

(1) Whether current law is adequate to:

(A) protect money and property placed in cemetery perpetual care trusts and preneed funeral trusts; and

(B) ensure that the money is used for its intended purposes.

(2) Whether additional restrictions, prohibitions, or rules are needed concerning cemetery perpetual care trusts and preneed funeral trusts to sufficiently protect consumers and the general public.

(3) Whether it is appropriate to revise Indiana law concerning funeral and cemetery trusts.

(4) Approaches used by other states to regulate funeral and cemetery trusts, trustees, funeral service and merchandise sellers, funeral home owners and operators, and cemetery owners.

(5) Any other matter concerning funeral and cemetery trusts the commission considers appropriate.

(c) The commission shall report its finding and recommendations to the legislative council in an electronic format under IC 5-14-6 not later than November 1, 2008.

(d) This SECTION expires November 2, 2008.

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SECTION 18. **An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1026 as introduced.)

HOY, Chair

Committee Vote: yeas 9, nays 0.

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